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residence of the person and his family," as used in section 61, have substantially the same meaning.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Home.\* For other cases, see 16 Va.-W. Va. Enc. Dig. 728.]

**7. Intoxicating Liquors (§ 238 (6)\*)—Manufacture and Dispensing of Cider—Character of Building as Part of Home—Question for Jury—Statute.**—In a prosecution for unlawfully dispensing cider containing more than 1 per cent. of alcohol, in violation of the Mapp prohibition law, cider having been made by defendant from his own fruit, if there is doubt as to whether the building wherein the cider was given away was part of defendant's bona fide home, the question should be submitted to the jury, to determine from the evidence the question of fact whether such was the case.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 23.]

Error to Circuit Court, Rockingham County.

Calvin Bare was convicted of unlawfully dispensing and giving away cider containing more than 1 per cent. of alcohol, and he brings error. Judgment reversed, and cause remanded for new trial.

*C. R. Winfield*, of Broadway, for plaintiff in error.  
*The Attorney General*, for the Commonwealth.

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VIRGINIA LUMBER & EXTRACT CO. *v.* O. D. McHENRY  
LUMBER CO.

Nov. 15. 1917.

[94 S. E. 173.]

**1. Landlord and Tenant (§ 123\*)—Lease of Sawmill—Personalty Included—"Apparatus."**—A lease of land and sawmill plant, together with personal property, including cars, engines, machinery, and "apparatus" of every kind and character then or thereafter placed on the real estate, covered the entire lumber plant, entitling lessee to locomotive, logging cars, tools, implements, and appliances used in operating the plant, furniture, tools, and equipment used in camps, shops, barns, office, etc., in use at the time of the lease, but did not include supplies in store for replacement or repairs of machinery and tools, in view of a provision that the lessee should pay for repairs and replacements, nor did it include foodstuffs, provisions, and medicines for employees and horses, nor horses used in hauling and work at the plant.

[Ed. Note.—For other definitions, see Words and Phrases, First

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and Second Series, Apparatus.\* For other cases, see 9 Va.-W. Va. Enc. Dig. 129, 157.]

**2. Appeal and Error (§ 1022 (3)\*)—Findings of Commissioner—Review.**—The commissioner's valuation of the property, based upon conflicting evidence taken before him and carefully considered, having been sustained by the circuit court, this court cannot properly overrule the report in that respect.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 449.]

**3. Limitation of Actions (§ 195 (3)\*)—Burden of Proof.**—The burden was on defendant to show that the cause of action arose more than the statutory period before the suit was brought.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

Appeal from Circuit Court, Botetourt County.

Suit by the O. D. McHenry Lumber Company against the Virginia Lumber & Extract Company to recover the value of the personal property which it is alleged defendant had wrongfully converted to its own use. From the decree entered, defendant appeals; plaintiff assigning cross-errors. Affirmed.

*Caskie & Caskie*, of Lynchburg, for appellant.

*Haden & Haden*, of Fincastle, for appellee.

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GOOD *v.* GOOD.

Nov. 15, 1917.

[94 S. E. 176.].

**Divorce (§ 133 (1)\*)—Desertion—Sufficiency of Evidence.**—In a wife's suit for divorce from bed and board for her husband's willful desertion for less than three years, evidence held sufficient to sustain the charge.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 745.]

Appeal from Circuit Court, Rockingham County.

Suit for divorce by Arabella Good against John P. Good. From a decree for defendant, plaintiff appeals. Reversed, and decree entered granting divorce.

*Chas. A. Hammer*, of Harrisonburg, for appellant.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.